

**REMARKS**

Applicants are in receipt of the latest office action, dated September 3, 2004. Claims 4, 13-16, and 18 stand rejected under 35 U.S.C. §112, second paragraph as being indefinite. Claim 18 stands rejected under 35 U.S.C. §103(a) as being obvious over A'Hearn, U.S. Patent No. 6,357,230 ("A'Hearn") in view of Oliphant, U.S. Patent No. 4,658,970 ("Oliphant"). Claims 14-18 stand rejected under §103(a) as being obvious over Broenner, et al., U.S. Patent No. 5,513,491 ("Broenner"), in view of A'Hearn and Oliphant. Claim 10 is apparently rejected under §103(a) over A'Hearn in view of Oliphant as applied to one of the earlier rejected claims. Claims 1-7 apparently stand rejected under §103(a) as being obvious over Broenner in view of A'Hearn and Oliphant, as applied to claims 14 and 15, and in further view of Bauer, U.S. Patent No. 3,866,700.<sup>1</sup>

In response to the office action, the claim set has been amended, and a Declaration with Exhibits A, B, C, D1-D6, and E is filed herewith. Withdrawal of the rejection and allowance of all claims is respectfully requested.

**The Claim Set is Not Indefinite.**

Claim 4 has been amended to include "valve" after "control" in line 3, as suggested in the office action. Claim 13 was amended to indicate that the ride improving mode includes both noted positions, and as such, the shifting of the second control valve does not inherently move the system out of the ride improvement mode.

Claims 14 and 15 have been amended as suggested in the office action. Claim 18 has been amended to replace the reference to "the second control valve" with "the control valve" as there is no reference in this claim to a first control valve.

**The A'Hearn Reference Has Been Eliminated.**

A'Hearn has a filing date of December 16, 1999 and an issue date of March 19, 2002. The present application has a U.S. filing date of May 25, 2001. Accordingly, the A'Hearn

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<sup>1</sup> The text of the rejection is "Claim 10 is rejected under 35 U.S.C. §103 as being unpatentable over A'Hearn et al in view of Oliphant, as applied to claim 10 above; and claims 3; and 1, 2, 4-7 and 13; are rejected under 35 U.S.C. §103..." While applicant is not certain as to the meaning of the language used in the action, the applicant believes that each claim rejection relies at least in part on A'Hearn, which is successfully sworn behind in this response.

reference is only available as prior art under 35 U.S.C. §102(e), and can be sworn behind under 37 C.F.R. §1.131 and MPEP §715. The attached declaration signed by both inventors states facts and provides supporting documentary evidence in Exhibits A, B, C, D1-D6, and E that show conception and a reduction to practice of the invention in a WTO country prior to the effective date of A'Hearn. Accordingly, this reference has been effectively sworn behind and is therefore no longer available as prior art. See MPEP §715.07.III.

No rejection, even in part, may be based on A'Hearn. Because all claim rejections rely at least in part on A'Hearn, all claim rejections must be withdrawn.

### CONCLUSION

In view of the above amendment, the pending application is in condition for allowance. The fee for the Petition for a Two Month Extension of Time is attached. Applicant believes no further fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 13-2855, under Order No. 06005/37458, from which the undersigned is authorized to draw.

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Respectfully submitted,

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